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International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Election of one judge of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Memorandum by the Secretary-General

I. Introduction

1. By its resolution 827 (1993) of 25 May 1993, the Security Council decided to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991 and to adopt the statute of the Tribunal annexed to the report of the Secretary-General prepared pursuant to Security Council resolution 808 (1993) of 22 February 1993 (S/25704 and Corr.1).

2. As set out in the letter from the President of the Security Council dated 12 June 2013 (S/2013/349), the President informed the Secretary-General that the members of the Security Council had noted that the Tribunal had less than the maximum number of 16 permanent judges permitted under article 12, paragraph 1, of its statute. The members of the Security Council had carefully analysed the current situation in the Tribunal based on the Completion Strategy Report of the Tribunal (S/2013/308), the April 2013 consolidated comprehensive plan and the updated and detailed schedules for each of the individual cases which the Tribunal had presented to the Council pursuant to its resolution 2081 (2012) of 17 December 2012. The members of the Security Council reasonably expected that an additional permanent judge would assist in the effective and timely completion of the Tribunal's mandate in accordance with resolution 1966 (2010) of 22 December 2010. They had therefore decided that one permanent judge of the Tribunal should be elected under article 13 bis, paragraph 1, of the statute, to be immediately assigned and redeployed to the Appeals Chamber. The Council therefore requested

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the Secretary-General to invite States to submit nominations within a period of 30 days.

3. Pursuant to the letter from the President of the Security Council of 12 June 2013 and in accordance with article 13 bis, paragraph 1, of the statute of the Tribunal, the Legal Counsel, on behalf of the Secretary-General, invited, by circular letter of 17 June 2013, all States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters to submit their nominations for a permanent judge of the Tribunal. Each State was invited to nominate, within 30 days of the date of the invitation, up to two candidates, no two of whom were to be of the same nationality.

4. The six nominations that had been received by the Secretary-General within the period specified in his letter of 17 June 2013 were forwarded by the Secretary-General to the President of the Security Council, by means of a letter dated 31 July 2013 (S/2013/455).

5. The members of the Security Council, having considered the nominations for one permanent judge received by the Secretary-General, and notwithstanding the letter of the President of the Security Council of 12 June 2013, decided to transmit a list of six nominations to the General Assembly. The Council formally conveyed the list to the President of the General Assembly by means of a letter dated 3 October 2013 from the President of the Security Council (A/68/516).

6. The term of office of the candidate elected will be the same as the term of office of the Tribunal judges currently serving in the Appeals Chamber. Accordingly, pursuant to Security Council resolution 2081 (2012) of 17 December 2012 and General Assembly decision 67/417 of 24 December 2012, that term will be until 31 December 2013 or the completion of the cases to which the judge is assigned, if sooner. Any further extension of the term of office of the judges currently serving in the Appeals Chamber will be subject to further decisions by both the General Assembly and the Security Council.

7. The list of candidates for one permanent judge and the procedure for the election of the permanent judges of the Tribunal are set out below. The curricula vitae of the candidates will be transmitted to the General Assembly in a separate document (A/68/540).

II. List of candidates for one permanent judge of the Tribunal

8. The list of candidates for one permanent judge of the Tribunal is as follows:

Mr. Koffi Kumelio A. Afande (Togo)

Mr. Thaer S. A. Al Adwan (Jordan)

Mr. Ahmad Beygi Habib Abadi (Islamic Republic of Iran)

Mr. Thomas Desch (Austria)

Mr. Pavel Gontšarov (Estonia)

Ms. Gabrielle McIntyre (Australia) — nominated by Saint Vincent and the Grenadines.

III. Procedure for the election of one permanent judge

9. The election of one permanent judge will take place in accordance with the following provisions:

(a) Article 13 and article 13 bis of the statute of the Tribunal, as amended;

(b) Given the similar nature of the election of judges of the International Court of Justice and the election of judges of the Tribunal, it was decided at the time of the previous elections of judges to follow similar election procedures in the General Assembly. The Secretary-General suggests that these precedents be followed and that rule 151 of the rules of procedure of the General Assembly be applied to the election of permanent judges of the Tribunal.

10. In accordance with article 13 bis, paragraph 1, of the statute of the Tribunal, the Holy See and the State of Palestine, being non-member States which maintain permanent observer missions at United Nations Headquarters, will participate in the election in the same manner as the States Members of the United Nations.

11. On the date of the election, the General Assembly will elect one permanent judge from the list of candidates submitted to it by the Security Council.

12. According to article 13 of the statute of the Tribunal, as amended, permanent judges of the Tribunal shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. According to that same provision, due account shall be taken in the overall composition of the Chambers of the Tribunal of the experience of the judges in criminal law, and international law, including international humanitarian law and human rights law.

13. In accordance with article 13 bis, paragraph 1, of the statute of the Tribunal, the candidates who receive an absolute majority of the votes of States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected.

14. The consistent practice of the United Nations has been to interpret the words "absolute majority" as meaning a majority of all electors, whether or not they vote or are allowed to vote. The electors in the General Assembly for current purposes are all 193 Member States, together with the two non-member States mentioned in paragraph 10 above. Accordingly, 98 votes constitute an absolute majority in the Assembly for the purpose of the present election.

15. Only those candidates whose names appear on the ballot papers are eligible for election. The electors will indicate the candidate for whom they wish to vote by placing a cross against the name on the ballot papers. Each elector may vote in the first ballot for no more than one candidate.

16. If, in the first ballot, no candidate obtains an absolute majority, balloting will continue in the same meeting, if and as necessary, until one candidate has obtained an absolute majority and the highest number of votes. In any second or subsequent ballot, each elector may vote for one candidate only.

17. Following the practice in the election of judges of the International Court of Justice, any second and subsequent balloting shall be unrestricted. Votes may accordingly be cast in any second or subsequent ballot for any eligible candidate.

18. When one candidate obtains the required majority and the highest number of votes, the President of the General Assembly shall declare the candidate concerned elected.